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GATEWAY TITLE COMPANY

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AUDREY MCNAMARA NEVIS,

Plaintiff,

v.

WELLS FARGO BANK, a California
corporation, EXECUTIVE FINANCIAL
LENDING, JOHN B. SPEAR, an individual,
SHAI MOSHE, an individual, GATEWAY
TITLE COMPANY, QUALITY LOAN
SERVICES, Trustee and DOES 1-100, inclusive,

Defendants.

Case No. C 07 2568 MHP

**ANSWER OF GATEWAY TITLE
COMPANY TO FIRST AMENDED
COMPLAINT**

Defendant Gateway Title Company ("Gateway") answers the First Amended Complaint ("FAC") of Plaintiff Audrey McNamara Nevis as follows:

1. Answering paragraph 1 of the FAC, Gateway lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the first sentence of said paragraph and on that basis denies said allegations. Gateway denies the allegations contained in the second sentence. Gateway denies that it engaged in any fraudulent, deceptive and negligent acts and practices.

2. Gateway lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraphs 2 through 7 of the FAC and on that basis denies the

1 allegations.

2 3. Answering paragraph 8 of the FAC, Gateway denies the allegations of the first
3 sentence. Gateway lacks knowledge or information sufficient to form a belief about the truth of the
4 allegation in the second sentence, and on that basis denies the allegations.

5 4. Gateway lacks knowledge or information sufficient to form a belief about the truth of
6 the allegations contained in paragraph 9 of the FAC and on that basis denies the allegations.

7 5. Answering paragraph 10 of the FAC, Gateway denies that it engaged in any
8 wrongdoing. Gateway admits that it is authorized to and does business in the Northern District of
9 California.

10 6. Paragraphs 11 and 12 of the FAC contain legal conclusions which do not require a
11 response. To the extent a response is required, Gateway lacks knowledge or information sufficient to
12 form a belief about the truth of the allegations contained in paragraphs 11 and 12 of the FAC and on
13 that basis denies the allegations.

14 7. Gateway lacks knowledge or information sufficient to form a belief about the truth of
15 the allegations contained in paragraphs 13 through 19 and on that basis denies the allegations.

16 8. Answering paragraph 20 of the FAC, Gateway admits that it acted as the escrow agent
17 for the transaction that is the subject of this action.

18 9. Gateway lacks knowledge or information sufficient to form a belief about the truth of
19 the allegations contained in paragraph 21 of the FAC and on that basis denies the allegations.

20 10. Gateway denies the allegations in paragraphs 22 through 24 of the FAC.

21 11. Answering paragraph 25 of the FAC, Gateway realleges and incorporates by reference
22 the responses to paragraphs 1 through 24 of the FAC as if set forth in full.

23 12. Gateway lacks knowledge or information sufficient to form a belief about the truth of
24 the allegations contained in paragraphs 26 through 32 of the FAC and on that basis denies the
25 allegations.

26 13. Answering paragraph 33 of the FAC, Gateway admits that it handled the escrow for
27 the transaction that is the subject of the FAC. Gateway lacks knowledge or information sufficient to
28 form a belief about the truth of the remaining allegations contained in paragraph 33 and on that basis

1 denies the allegations.

2 14. Answering paragraph 34 of the FAC, Gateway admits that it handled the escrow for
3 the transaction that is the subject of the FAC. Gateway denies the remaining allegations in paragraph
4 34.

5 15. Gateway denies the allegations in paragraph 35 of the FAC.

6 16. Answering paragraph 36 of the FAC, Gateway denies that it made any false promises
7 or misrepresentations, as alleged, and denies the remaining allegations of paragraph 36.

8 17. Answering paragraph 37 of the FAC, Gateway denies that made any false promises,
9 misrepresentations or concealments, as alleged, and denies the remaining allegations of paragraph 37.

10 18. Answering paragraph 38 of the FAC, Gateway admits that it earned a modest fee for
11 handling the escrow for the transaction. Gateway denies that it earned significant fees, as alleged.
12 Gateway lacks knowledge or information sufficient to form a belief about the truth of the allegations
13 in paragraph 38, and on that basis denies the allegations.

14 19. Gateway lacks knowledge or information sufficient to form a belief about the truth of
15 the allegations in paragraphs 39 through 43 of the FAC and on that basis denies the allegations.

16 20. Gateway denies the allegations in paragraph 44 of the FAC as to Gateway. Gateway
17 lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding
18 plaintiff's age and financial status, and on that basis denies the allegations.

19 21. Answering paragraph 45 of the FAC, Gateway denies that it engaged in conduct and
20 practices in targeting Plaintiff as alleged in the FAC and referred to in paragraph 45. Gateway lacks
21 knowledge or information sufficient to form a belief about the truth of the remaining allegations in
22 paragraph 45 and on that basis denies the remaining allegations.

23 22. Answering paragraph 46 of the FAC, Gateway realleges and incorporates by reference
24 the responses to paragraphs 1 through 45 of the FAC as if set forth in full.

25 23. Answering paragraphs 47 through 53 of the FAC, Gateway acknowledges that the first
26 cause of action for violations of the TILA and Regulation Z, is not against Gateway. On the basis that
27 the allegations against "Defendants" in paragraphs 47 through 53 are not against Gateway, Gateway
28 responds that it lacks knowledge or information sufficient to form a belief about the truth of the

1 allegations contained in paragraphs 47 through 53 and on that basis denies the allegations.

2 24. Answering paragraph 54 of the FAC, Gateway realleges and incorporates by reference
3 the responses to paragraphs 1 through 53 of the FAC as if set forth in full.

4 25. Answering paragraphs 55 through 58 of the FAC, Gateway asserts that the second
5 cause of action, for violation of the RESPA, is not against Gateway. On the basis that the allegations
6 against “Defendants” in paragraphs 55 through 58 are not against Gateway, Gateway responds that it
7 lacks knowledge or information sufficient to form a belief about the truth of the allegations in
8 paragraphs 55 through 58 of the FAC and on that basis denies the allegations.

9 26. Answering paragraph 59 of the FAC, Gateway realleges and incorporates by reference
10 the responses to paragraphs 1 through 58 of the FAC as if set forth in full.

11 27. Responding to paragraphs 60 through 65 of the FAC, Gateway asserts that the third
12 cause of action, for fraud and deceit, is not against Gateway. On the basis that the allegations against
13 “Defendants” in paragraphs 60 through 65 are not against Gateway, Gateway responds that it lacks
14 knowledge or information sufficient to form a belief about the truth of the allegations in paragraphs
15 60 through 65 of the FAC and on that basis denies the allegations.

16 28. Answering paragraph 66 of the FAC, Gateway realleges and incorporates by reference
17 the responses to paragraphs 1 through 65 of the FAC as if set forth in full.

18 29. Responding to paragraphs 67 through 74 of the FAC, Gateway asserts that the fourth
19 cause of action for elder abuse is not against Gateway. On the basis that the allegations against
20 “Defendants” in paragraphs 67 through 74 are not against Gateway, Gateway responds that it lacks
21 knowledge or information sufficient to form a belief about the truth of the allegations contained in
22 paragraphs 67 through 74 of the FAC and on that basis denies the allegations.

23 30. Answering paragraph 75 of the FAC, Gateway realleges and incorporates by reference
24 the responses to paragraphs 1 through 74 of the FAC as if set forth in full.

25 31. Answering paragraph 76 of the FAC, Gateway admits that it acted as the escrow agent
26 for the transaction that is the subject of the litigation and owed a duty to Plaintiff to follow the escrow
27 instructions given to it. Gateway denies the remaining allegations contained in paragraph 76.

28 32. Answering paragraph 77 of the FAC, Gateway denies that it was a fiduciary in the

1 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions.
2 Gateway lacks knowledge or information sufficient to form a belief about the truth of the remaining
3 allegations in paragraph 77 of the FAC, and on that basis denies the allegations.

4 33. Answering paragraph 78 of the FAC, Gateway denies that it was a fiduciary in the
5 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions.
6 Gateway denies the remaining allegations in paragraph 78 of the FAC.

7 34. Answering paragraph 79 of the FAC, Gateway denies that it was a fiduciary in the
8 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions
9 given to it by the parties. As to the remaining allegations in paragraph 79 of the FAC, Gateway lacks
10 knowledge or information sufficient to form a belief about the truth of the remaining allegations and
11 on that basis denies the allegations.

12 35. Gateway denies the allegations in paragraphs 80 and 81 of the FAC.

13 36. Answering paragraph 82 of the FAC, Gateway denies that it was a fiduciary in the
14 traditional sense and asserts that it had a limited duty to Plaintiff to follow the escrow instructions.
15 Gateway denies that it breached any fiduciary duty to Plaintiff. As to the remaining allegations in
16 paragraph 82, Gateway lacks knowledge or information sufficient to form a belief about the truth of
17 the remaining allegations and on that basis denies the allegations.

18 37. Gateway denies the allegations in paragraphs 83 through 85 of the FAC.

19 38. Answering paragraph 86 of the FAC, Gateway realleges and incorporates by reference
20 the responses to paragraphs 1 through 85 of the FAC as if set forth in full.

21 39. Gateway denies the allegations in paragraph 87 of the FAC.

22 40. Answering paragraph 88 of the FAC, Gateway admits that it acted as the lender's and
23 Plaintiff's escrow agent and had a limited duty to follow the escrow instructions given to it by the
24 parties. Gateway lacks knowledge or information sufficient to form a belief about the truth of the
25 remaining allegations contained in paragraph 88 and on that basis denies said allegations.

26 41. Answering paragraphs 89 to 91 of the FAC, Gateway lacks knowledge or information
27 sufficient to form a belief about the truth of the allegations contained in said paragraphs and on that
28 basis denies said allegations.

1 42. Answering paragraph 92 of the FAC, Gateway realleges and incorporates by reference
2 the responses to paragraphs 1 through 91 of the FAC as if set forth in full.

3 43. Gateway denies the allegations in paragraph 93 through 95 of the FAC.

4 44. Answering paragraph 96 of the FAC, Gateway denies that it made the
5 misrepresentations and engaged in the concealment, deceit, undue influence, coercion and other
6 wrongful conduct as alleged. As to the remaining allegations of paragraph 96, Gateway lacks
7 knowledge or information sufficient to form a belief about the truth of the remaining allegations and
8 on that basis denies the allegations.

9 45. Gateway denies the allegations in paragraph 97 of the FAC.

10 46. Answering paragraph 98 of the FAC, Gateway denies that it made the
11 misrepresentations and engaged in the concealment, deceit, undue influence, coercion and other
12 wrongful conduct as alleged. As to the remaining allegations of paragraph 98, Gateway lacks
13 knowledge or information sufficient to form a belief about the truth of the remaining allegations and
14 on that basis denies the allegations.

15 47. Answering paragraph 99 of the FAC, Gateway denies that it was unjustly enriched as
16 alleged. As to the remaining allegations of paragraph 99, Gateway lacks knowledge or information
17 sufficient to form a belief about the truth of the remaining allegations and on that basis denies the
18 allegations.

19 48. Gateway denies the allegations in paragraph 100 of the FAC.

20 49. Answering paragraph 101 of the FAC, Gateway realleges and incorporates by
21 reference the responses to paragraphs 1 through 100 of the FAC as if set forth in full.

22 50. Answering paragraphs 102 through 109 of the FAC, Gateway denies the allegations
23 contained therein.

24 51. Answering paragraph 110 of the FAC, Gateway realleges and incorporates by
25 reference the responses to paragraphs 1 through 109 of the FAC as if set forth in full.

26 52. Gateway denies the allegations in paragraph 111 of the FAC.

27 53. Answering paragraph 112 and 113, Gateway admits that it had a limited duty to
28 Plaintiff to follow the escrow instructions given to it by the parties. As to the remaining allegations of

1 paragraphs 112 through 113, Gateway lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations contained in said paragraph and on that basis denies said allegations.

3 54. Gateway denies the allegations in paragraph 114 through 116 of the FAC.

4 **AFFIRMATIVE DEFENSES**

5 55. As a first affirmative defense, Gateway alleges that each cause of action in the
6 complaint fails to state a claim against Gateway upon which relief can be granted.

7 56. As a second affirmative defense, Gateway alleges that as a matter of law, Plaintiff has
8 misstated the role of an escrow holder and the duties owed to Plaintiff by Gateway in the limited
9 agency role of an escrow holder.

10 57. As a third affirmative defense, Gateway alleges Plaintiff's damages, if any, were the
11 result of the acts of Plaintiff, other defendants or third parties. Any recovery by Plaintiff should be
12 reduced or eliminated accordingly. If Gateway is found to be liable, it requests an apportionment of
13 fault among all the parties and requests a judgment of partial indemnification of liability against all
14 other defendants who may have caused or contributed to Plaintiff's damages, if any.

15 58. As a fourth affirmative defense, Gateway alleges that to rescind the transaction,
16 Plaintiff must restore and return the monies received, to the extent that monies were paid to Plaintiff,
17 or on Plaintiff's behalf.

18 59. As a fifth affirmative defense, Gateway alleges that Gateway performed all the
19 obligations under the escrow agreement except for those obligations it was excused or prevented from
20 performing.

21 60. As a sixth affirmative defense, Gateway is informed and believes and thereon alleges
22 that Plaintiff failed to mitigate her damages, if any.

23 61. As a seventh affirmative defense, Gateway alleges that the lender is entitled to
24 an equitable lien on the property to the extent that it caused to be paid off existing liens and
25 encumbrances against Plaintiff's real property.

26 62. As a eighth affirmative defense, Gateway is informed and believes and thereon alleges
27 that Plaintiff's damages, if any, are barred by the doctrines of waiver and estoppel.

28 WHEREFORE, Gateway prays as follows:

PRAYER

1. That Plaintiff take nothing by reason of the FAC and that Gateway be dismissed from the action;
2. For costs of suit incurred, including attorney's fees; and
3. For such other and further relief as the Court may deem just and proper.

Dated: October 5, 2007

BARDELLINI, STRAW, CAVIN & BUPP, LLP

By: /s/ Helen V. Powers
John F. Cavin
Helen V. Powers
Attorneys for Defendant
GATEWAY TITLE COMPANY

PROOF OF SERVICE

I declare that:

I am employed in San Ramon, California. I am over the age of 18 years and not a party to this action. My business address is 2000 Crow Canyon Place, Suite 330, San Ramon, California, 94583.

On this date, I caused to be served the attached document(s) entitled:

Nevis v. Wells Fargo Bank, et al./U.S. District Court Case No. C07 2568

ANSWER OF GATEWAY TITLE COMPANY TO FIRST AMENDED COMPLAINT

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Attorneys for Defendant
QUALITY LOAN SERVICES

The following is the procedure in which service of this document(s) was effected:

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5 **By Fax:** I caused a copy of the above named documents to be transmitted via facsimile to the
6 facsimile number of the offices of the addressee(s) as indicated above. The facsimile machine
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10 service (i.e., Federal Express, UPS) to the offices of the addressee(s).

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12 addressee(s) as indicated above.

13 I hereby declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed on October 5, 2007, in San Ramon, California.
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 /s/ David Weibel
David Weibel